

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 IO-14 ISO-00 EB-07 COME-00 AF-10
ARA-14 EA-09 NEA-10 OIC-02 TRSE-00 /082 W
-----024049 210942Z /10
R 210838Z JUN 77
FM AMEMBASSY VIENNA
TO SECSTATE WASHDC 2180

UNCLAS SECTION 1 OF 2 VIENNA 4956

E.O. 11652: N/A
TAGS: OCON, UNCITRAL
SUBJECT: UNCITRAL PLENARY, MAY 23 - JUNE 17 - THIRD AND FINAL WEEKS

1. SUMMARY CONFERENCE BARELY MANAGED TO FINISH REVISING TEXT OF DRAFT CONVENTION ON INTERNATIONAL SALE OF GOODS (CISG), BY ADOPTING REPORT OF DRAFTING GROUP AS ITS WON. COMMITTEE II STOPPED WORK ON PRODUCTS LIABILITY, DECIDED TO STUDY SERIOUSLY AND SYMPATHETICALLY ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE (AALCC) RECOMMENDATIONS ON ARBITRATION. TEXT OF DRAFT REPORTS OF COMMITTEES I AND II, DRAFTING GROUP, AND PLENARY BEING POUCHED TO L ATTENTION KEARNEY.

2. PLENARY OVERWHELMINGLY REJECTED, AFTER INORDINATELY LONG DISCUSSION, UK PROPOSAL TO TURN CISG INTO MODEL RULES.

3. COMMITTEE I DISCUSSIONS OF CISG CONTINUED THROUGH FRIDAY OF THIRD WEEK. MOST IMPORTANT DEVELOPMENT WAS DELETION OF ARTICLE 58 (INTEREST); MANY DELEGATIONS REGRET THIS RESULT OF DISAGREEMENT ON PRINCIPLES, AND WILL RAISE ISSUE AT DIPLOMATIC CONFERENCE. USDEL FARNSWORTH'S SUMMARY OF HIGH-POINTS FOLLOWS.

A. USSR PROPOSAL TO DELETE ARTICLE 36 (US OPPOSED) RESULTED IN LONG DEBATE, ENDING IN 16-14 VOTE AGAINST DELETION.

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B. SINGAPORE PROPOSED THAT WHEN THE COMMITTEE IS "POLLED" THE OBSERVERS SHOULD NOT PARTICIPATE. AFTER DEBATE AND EXPLANATION BY BLAINE SLOAN OF THE SECRETARIAT, A COMPROMISE WAS REACHED UNDER WHICH ANY MEMBER MIGHT ASK FOR SECOND POLL OF MEMBERS ONLY. THIS IS IMPORTANT MATTER OF PROCEDURE, RAISED BY SINGAPORE SEVERAL TIMES DURING CONFERENCE, THAT

MAY HAVE IMPORTANT REPERCUSSIONS ELSEWHERE. RESOLUTION SEEMS SATISFACTORY TO US.

C. USSR THEN SUGGESTED BRACKETING ARTICLE 36. FURTHER DISCUSSION FOLLOWED ON AMENDMENTS TO TEXT AND IT WAS VOTED TO CHANGE LANGUAGE TO MAKE CLEAR SECTION APPLIES ONLY IF CONTRACT IS VALID. OTHER AMENDMENTS REJECTED AND NEW "VOTE" ON DELETION PRODUCED CLEAR MAJORITY AGAINST. PROPOSAL TO BRACKET ARTICLE REJECTED; USSR AND GHANA MADE RESERVATIONS.

D. DANISH PROPOSAL (CRP 23) TO AMEND ARTICLE 45 DEFEATED BY SUBSTANTIAL MARGIN. US SUPPORTED, AND QUESTIONIGHT BE RENEWED AT DIPLOMATIC CONFERENCE, WHERE IT MAY BE BETTER TACTICS TO ASK THAT ARTICLE 45 BE CONFORMED TO ARTICLE 30.

E. ICC PROPOSAL (CRP 5) TO DELETE LANGUAGE AT END OF ARTICLE 47 (3) WAS TRANSFORMED BY UK INTO SUCCESSFUL PROPOSAL TO DELETE LAST SENTENCE ONLY ON GROUND THAT ARTICLE 49 SHOULD GOVERN AVOIDANCE. US OPPOSED IT, BUT NOT STRONGLY, AND SUCCEEDED IN AUTHORIZING DRAFTING GROUP TO ADD A SENTENCE SAYING THAT RIGHTS OF AVOIDANCE ARE GOVERNED BY ARTICLE 49.

F. US PROPOSAL FOR ARTICLE 48 WAS OVERWHELMINGLY APPROVED.

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G. ARTICLE 50 WAS DISCUSSED AT LENGTH. CONSIDERABLE SUPPORT FOR US PROPOSAL FOR PARA 3, WHICH WENT TO DRAFTING GROUP.

H. A US SUGGESTION FOR MAKING IT CLEAR THAT ARTICLES 56 AND 57 WERE SPECIFIC INSTANCES OF THE GENERAL RULE IN ARTICLE 55 AND THAT ONE COULD NOT USE 57 IF ONE HAD COVERED OR RESOLD UNDER 56 FOUND FAVOR AND WENT TO DRAFTING GROUP.

I. WE HEADED OFF AUSTRIAN PROPOSAL FOR ARTICLE 57 (A/CN.9/126)PP.47-48). HUNGARIAN COMPROMISE TO CHANGE LAST WORDS OF ARTICEL 57(1) ADOPTED: "... THE DATE ON WHICH HE FIRST HAD THE RIGHT TO DECLARE THE CONTRACT AVOIDED."

J. AFTER EXTENDED DISCUSSION ARTICLE 58 DELETED (US MILDLY OPPOSED). US PROPOSAL FOR ARTICLE 59 WAS DEFEATED IN REASONABLY CLOSE VOTE DIRECTED AT THE PRINCIPLE ONLY.

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K. DISCUSSION OF POLISH PROPOSAL ON LIQUIDATED DAMAGES
(CRP 40) PRODUCED GENERAL EXPRESSION OF INTEREST IN
SUBJECT AND CONSENSUS THAT SECRETARIAT MIGHT STUDY IT,
BUT THAT IT WAS NOT RIPE FOR CISG. US DID NOT SPEAK.

1. US AND FRG PROPOSALS (A/CN.9/126, P 57) FOR ARTICLE
65 WERE ACCEPTED.

4. DRAFTING GROUP MET SATURDAY, MONDAY THROUGH THURSDAY
NIGHT OF FOURTH WEEK. SESSIONS TINGED WITH ASPERITY DUE
TO LACK OF TIME, TENDENCY OF CHAIRMAN AND OTHERS TO MAKE
MINOR AND UNNECESSARY DRAFTING CHANGES AFTER ESSENTIAL
POINTS HAD BEEN MADE, AND OCCASIONAL PERSONAL TENSIONS.
WORK COMPLETED, NONETHELESS, TO GENERAL SATISFACTION
OF US.

5. COMMITTEE II (CHAIRMAN LOEWE, AUSTRIA; RAPPORTEUR
MAGREOLA, NIGERIA) COMPLETED SUBSTANTIVE WORK IN TWO
DAYS, TAKING THE FOLLOWING ACTIONS:

A. RECOMMENDED POSTPONEMENT OF WORK ON "GENERAL" GENERAL
CONDITIONS OF SALE

B. REQUESTED FURTHER STUDY OF SECURITY INTERESTS, WHICH
TOPIC WAS WIDELY CONSIDERED TOO AMBITIOUS FOR ACTION AT
THIS TIME.

C. REQUESTED SECRETARIAT TO STUDY AALCC RECOMMENDATIONS,
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WHICH RECEIVED CONSIDERABLE SYMPATHY AND ACCEPTANCE.

D. REQUESTED THAT GENERAL ASSEMBLY CONSIDER FUNDING
SECOND UNCITRAL TRAINING SYMPOSIUM.
E. DECIDED TO STOP WORK ON PRODUCTS LIABILITY SUBJECT
TO REVIEW IF INITIATIVE TAKEN TO DO SO.

6. ON FINAL DAY, (A) COMMITTEE I IN 90 MINUTES ADOPTED
REPORT OF DRAFTING GROUP (CRP 55 AND ADDS) WITHOUT DIS-
CUSSION, AND DRAFT COMMITTEE I REPORT (CRP 20 AND ADDS)
ADOPTED, IN LOGICAL CONSEQUENCE, WITHOUT DISCUSSION BEYOND
INTRODUCTORY PARAGRAPHS 1-8. (B) PLENARY ADOPTED
REPORT OF COMMITTEE I WITHOUT DISCUSSION. COMMITTEE II
REPORT (CRP 2) DISCUSSED AT SOME LENGTH, WITHOUT OBJECTIONS
EXPRESSED TO HALT ON PRODUCTS LIABILITY WORK, BUT ADOPTED.
COMMISSION REPORT (CRP 3 AND ADDS) ADOPTED WITH ORGANI-
ZATIONAL CHANGES TO BE MADE BY SECRETARIAT IN FINAL TEXT.
COPIES OF ALL REPORTS BEING POUCHED TO L - KEARNEY. EX-
TENSIVE DISCUSSION OF DATES OF 11TH SESSION (PROBABLY
5 - 23 JUNE 1978).MEEHAN

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